IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

Bail Appl..No. 6003 of 2007()

CRMP.1703/2007 of ADDL. DISTRICT COURT (ADHOC), KOLLAM
CRIME NO.679/06 OF PUNALUR POLICE STATION

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: PETITIONER/3RD ACCUSED

SUBAIR, S/O UMAIBA,
CHARUVILA VEEDU, PANANGADU,
VALAKODE VILLAGE, PUNALUR.

BY ADV. SRI.M.SREEKUMAR

RESPONDENTS: STATE & COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
PUNALUR POLICE STATION, PUNALUR.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 04/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 6003 OF 2007

Dated this the 4th day of October, 2007

ORDER

Application for anticipatory bail. The petitioner is the 3rd accused. Altogether, there are only three accused persons. The crux of the allegations against the petitioner is that on account of some animosity between accused 1 and 2 on the one hand and the de facto complainant – a salesman in a toddy shop, on the other, the accused persons, along with many others, were members of an unlawful assembly of persons, who came to the toddy shop, attacked the de facto complainant and indulged in wanton acts of mischief and violence. The alleged incident took place on 6/11/06. Accused 1 and 2 are named in the F.I.R. The petitioner was brought on the array of accused as per a report dated 8/11/06 which reached the court only on 13/3/07. Investigation is now complete. Final report has

already been filed. Cognizance has been taken by the learned Magistrate. Proceedings are pending before the learned Magistrate as committal proceedings. The petitioner has received a summons to appear. The petitioner's application made through the counsel was rejected. A warrant of arrest has been issued. The petitioner apprehends imminent arrest in execution of the warrant issued.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The petitioner has been brought on the array of accused subsequently only with oblique motive. The report arraying the petitioner as accused reached the court only on 13/3/07, though it is seen dated 8/11/06, it is submitted. In these circumstances, anticipatory bail may be granted to the petitioner. The petitioner is not even alleged to be guilty of any specific overt act against the de facto complainant, it is submitted.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there are no circumstances warranting or justifying the invocation of the discretion under Sc.438 of the Cr.P.C. The allegation is that the petitioner was a member of an unlawful assembly of persons who shared the common object. Identification of specific overt act is

not of any crucial significance in a case like the instant one at this stage. It is very evident that the petitioner entertained the common object of the members of the unlawful assembly. There is also an allegation that he indulged in wanton acts of mischief. In these circumstances, the discretion under Sec.438 of Cr.P.C. may not be invoked in favour of the petitioner. The petitioner may be directed to surrender before the learned Magistrate, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. After the decision in **Bharat Chaudhary and another v. State of Bihar (**AIR 2003 SC 4662), it is by now trite that powers under Sec.438 of the Cr.P.C. can be invoked in favour of a person who apprehends arrest in execution of a non-bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded, in the facts and circumstances of this case, that any such reasons exist.

5. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the

learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

6. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge